IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SALES TAX APPLICATION NO.6 OF 2006
IN
REFERENCE APPLICATION NO. 31,32,33 AND 34 OF 2004

WITH
SALES TAX APPLICATION NO.13 OF 2006
IN
REFERENCE APPLICATION NO. 31,32,33 AND 34 OF 2004

WITH
SALES TAX APPLICATION NO.14 OF 2006
IN
REFERENCE APPLICATION NO.31,32,33 AND 34 OF 2004

WITH
SALES TAX APPLICATION NO.15 OF 2006
IN
REFERENCE APPLICATION 31,32,33 AND 34 OF 2004

The Commissioner of Sales Tax ..Applicant

Vs.

M/s.Blue Chip Text Fuel
Industries Ltd. ..Respondent

Mr.P.G.Sawant, A.G.P.for the Applicant.
Mr.B.C.Joshi with Mrs.N.R.Badheka for the Respondent.

CORAM :- DR.S.RADHAKRISHNAN &
J.P.DEVADHAR,JJ.

DATE : 9TH FEBRUARY,2007

P.C.

1. All these four Applications filed under Section 61 of the Bombay Sales Tax Act, 1959 arise from a common order passed by the Sales Tax Tribunal, Mumbai on 28th September,2005. In all these Applications, the common questions raised by the Revenue are :-

a) Whether the Tribunal was justified in holding that the sales effected by the Appellant after importing the goods in Maharashtra and after storing them with M/s.S.P.Thakkar, Clearing Agent, does not amount to termination of movement as held in M/s.Arjandas Gupta and Others Vs. Commissioner of Sales Tax (45 STC 52) and not liable to tax under B.S.T.Act,1959.

b) Whether Hon'ble Tribunal was justified after going through the mentioned six documents and holds that none of the document relied upon by the assessing authority to hold that M/s.S.P.Thakkar had stored the goods as the Appellant's agent can be said to conclusively prove such a relationship ?

2. The facts relevant for the purpose of these Applications are that the Respondent deals in texturised yarn. The Respondent has a unit at Silvassa, where artificial yarn is produced and subsequently sold. The Respondent is also having an office at Mumbai.

3. The artificial yarn manufactured at Silvassa Unit is sold to various parties in Maharashtra.

4. The sales effected in Maharashtra by despatching the goods from their Silvassa Unit through their transporters and making endorsements on the lorry receipts, were claimed by the Respondent to be interstate sales.

5. On investigation by the Enforcement Branch, it was found that the goods despatched from Silvassa were

stored in a Godown at Bhivandi and thereafter the said goods were sold. According to the Applicant, the goods were unloaded at Bhivandi at the instance of the Respondent and therefore, the sales effected thereafter were local sales. Accordingly, assessment orders were passed.

6. On Appeal filed by the Respondent, the first Appellate Authority confirmed the assessments. On second Appeal, the Sales Tax Tribunal allowed the claim of the Respondent. On a reference Applications filed by the Applicant, the Sales Tax Tribunal dismissed the same by holding that the decision of the Tribunal was based on finding of facts. Hence, these Reference Applications have filed by the Applicant.

7. From the order passed by the Tribunal, it is seen that the Tribunal has came to the conclusion that the goods despatched from Silvassa were stored in the godown of M/s.S.P.Thakkar at Bhiwandi by the Transporter and that the Respondent was not in any way connected with the said godown. The Tribunal has arrived at the above conclusion on the basis of the statements recorded under Section 53 of the Bombay Sales Tax Act. The Tribunal has further held that the six documents relied upon by the Assessing Officer do not conclusively prove that the goods were stored in the godown for and on behalf of the Respondent. The findings recorded by the Tribunal are findings of fact

and therefore, rejection of the Reference Applications by the Sales Tax Tribunal on the ground that it is not a fit case for drawing up a statement of the case cannot be faulted.

8. In the result, the Reference Applications filed by the Commission of Sales Tax are dismissed.

(J.P.DEVADHAR,J.) **(DR.S.RADHAKRISHNAN,J.)**